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81-2393

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

IN RE: THE MEDICAL LICENSE OF DR. RICARDO MUNOZ,

Petitioner,

vs.

DEPARTMENT OF REGISTRATION AND EDUCATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTION PRESENTED

1. Whether the Illinois Appellate Court erred in failing to order a new hearing before the Medical Examining Committee of the Illinois Department of Registration and Education on the grounds that petitioner was not properly notified of the nature of the hearing to be conducted, as required by the Illinois Administrative Procedure Act and due process of law.

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REASONS FOR GRANTING WRIT OF CERTIORARI

In affirming the trial court, the Appellate Court of Illinois, First District, held that the petitioner had been afforded due process of law at the hearing before the Medical Examining Committee and that the notice requirements of the Administrative Procedure Act were inapplicable to the Department's determination. In so ruling, the Appellate Court determined that the proceedings before the Medical Examining Committee did not fall within the area of a "contested case" under the Administrative Procedure Act

where the strict notice requirements would be applicable. Petitioner contends that the facts of the instant case require that the Department meet all of the notice requirements of the Administrative Procedure Act concerning contested cases where the Department makes an administrative determination impacting directly on the merits of existing litigation to which it is a party defendant.

JURISDICTIONAL STATEMENT

The judgment of the Appellate Court of Illinois affirming the decision of the Circuit Court of Cook County, Illinois,

was entered on November 18, 1981. A timely Petition for Leave to Appeal to the Supreme Court of Illinois was denied on March 30, 1982.

This Petition for Certiorari has been filed within ninety days of the denial of the Petition for Leave to Appeal in accordance with 28 U.S.C. §2101(c). Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Ill. Rev. Stat., Ch. 127, §1010:

Contested Cases-Notice-Hearing

> §10. (a) In a contested case, all parties shall be afforded

an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular Sections of the statutes and rules involved; and

4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

STATEMENT OF FACTS

In 1977, petitioner, Dr. Ricardo Munoz filed a Complaint for Mandamus seeking to compel the Department of Registration and Education (hereinafter the "Department") to issue a license to Dr. Munoz to practice medicine in all of its branches within the State of Illinois (C. 2-7). The allegations set forth in Dr. Munoz's complaint stated that Dr. Munoz is a United States citizen of Spanish extraction

who, on four different occasions, sat for the National Board Examination in order to obtain a license to practice medicine in Illinois (C. 2-4). Dr. Munoz alleged that in April and October of 1968 he had received notification from the Department that he had passed this examination but that a license had not been issued to him (C. 4-5).

Ricardo Munoz is a graduate of Havana Medical School and has taken post-graduate courses at Loyola Medical School, Northwestern University Medical School, University of Chicago Medical School, University of Illinois Medical School and at the Harvard Medical School (C. 3).

Dr. Munoz is a member of numerous medical societies including the American Medical Association, the Illinois Registry of Anatomic Pathology, the Illinois Society of Pathologists. Dr. Munoz has also worked extensively on scientific research, both published and unpublished.

Subsequent to the filing of Dr. Munoz's complaint for mandamus, Dr. Munoz retained the services of Olga Morales, an attorney. On May 31, 1978, Ms. Morales directed a letter to Joan S. Anderson, Director of the Department, stating that the matter had been continued by the Court and requested that Dr. Munoz be afforded an

opportunity to examine the original documents and examinations to determine whether the Department had contrary evidence showing that he had not passed the examination on each occasion (C. 166). On June 5, 1978, Ms. Morales was informed by the Department that the Illinois Medical Examining Committee would "interview" Dr. Munoz on June 14, 1978 at 10:30 A.M. (C. 165). This correspondence from the Department would be present or that a court reporter would be present to transcribe the proceedings. The letter from the Department merely advised that Dr. Munoz

should bring with him such papers and documents as would "support his claim for licensure in this matter" (C. 165).

At the interview on June 14, 1978, Jeffrey Stokols appeared on behalf of the Medical Examining Committee* as the technical advisor and Ms. Morales appeared with Dr. Munoz (C. 87). Prior to the taking of any testimony or introduction into evidence of any exhibits, Ms. Morales stated that the whole

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*The committee members included Dr. Richard Rouner, Chairman, Dr. Robert Rehmer, Dr. Charles K. Bebelis, Dr. Maxwell Mays, Dr. Larry Patton and Dr. Paul Tulio (C. 87).

matter could be resolved if Dr. Munoz could simply examine the original test booklets and answers to determine his success or failure on the examination in question (C. 90).

Dr. Munoz then advised that on April 2, 1968, he received notification from the Department that he had passed the National Board Examination and identified a copy of a letter that he received which indicated that he had passed the exams (C. 91-92). This letter, at the suggestion of Mr. Stokols, was later marked as Munoz Exhibit 1 (C. 92). Ms. Morales then presented a letter indicating that Dr. Munoz had passed the

second examination in 1968 and marked it as Munoz Exhibit 2 (C. 92).

Further questions were then asked of Dr. Munoz by Mr. Stokols, Chairman Rorner and Dr. Tulis (C. 97, 100, 103, 110). In addition, the Examining Committee called as its witness Ms. Beatrice Taylor, a supervisor of the Medical section of the Department (C. 115). Portions of Ms. Taylor's statement were also given prior to her being sworn as a witness (C. 108-109). Also, the Department introduced and marked their Group Exhibit 1, 2 and 3 (C. 117-118).

Although Ms. Morales questioned Ms. Taylor, her inquiry concerned the original exam booklets and answer sheets (C. 138). Ms. Morales again stated that the reason she requested the interview was to determine if the original exam booklets could verify that Dr. Munoz had passed the examination in 1968 (C. 140-142). Mr. Stokols stated that he understood the purpose for the hearing was to determine if Dr. Munoz should be granted a license to practice medicine (C. 142). But Chairman Rorner stated that the hearing was requested only to address the issue whether or not Dr. Munoz had passed his National Board Examination (C. 145). Ms. Morales stressed

that the only issue that Dr. Munoz was concerned with at this hearing was whether the Department had the original test booklets and answers as proof that Dr. Munoz had not passed his examination (C. 144).

On July 19, 1978, approximately one month after Dr. Munoz's interview with the Examining Committee, Ms. Morales formally withdrew as counsel for petitioner (C. 26). On August 31, 1978, W. Mauldin Smith was given leave to file his appearance as counsel for Dr. Munoz, and the case was continued before Judge Dunne until November 2, 1978 (C. 28). On November 2, 1978, W. Mauldin Smith filed an Amended Complaint and respondent was given twenty-eight days to answer (C. 33).

After a series of continuances had been granted* the court ordered the Department to file, on or before April 23, 1979 the Record of the hearing and the respondent's "final order" (C. 36). On April 20, 1979, the respondent filed, as its Answer to the Amended Complaint, the Report of Proceedings of the "hearing" before the Examining Committee (C. 38).

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*At this time, it was not known to the Court or Dr. Munoz that W. Mauldin Smith had been disbarred in January, 1979.

On July 2, 1979, W. Mauldin Smith, on behalf of Dr. Munoz, presented a Motion for Rehearing pursuant to Ill. Rev. Stat., Ch. 111, §4445 which alleged, inter alia, that the hearing before the Medical Examination Committee's conformance with the applicable "rules of evidence and privilege" (C. 45). The Court denied this motion and dismissed the complaint for mandamus (amending it on its face as a complaint for administrative review) and affirmed the decision of the Director of the Department in denying Dr. Munoz his license to practice medicine (C. 48). Further, the court specifically found

that the decision of the Department was not against the manifest weight of the evidence or contrary to law (C. 48).

On July 25, 1979, Dr. Munoz, acting on his own behalf, filed a Motion for Rehearing, setting forth that W. Mauldin Smith had been disbarred in January of 1979 (C. 50-55), prior to the Court's decision. On July 27, 1979, the Court granted this Motion and vacated its order of July 2, 1979 and continued the matter until August 24, 1979 (C. 62). After new counsel had been retained, the Court entered an order on November 27, 1979, affirming the determination

of the Director of the Department denying Dr. Munoz his license to practice medicine in all of its branches in the State of Illinois (C. 71). Prior to entry of this order, counsel for Dr. Munoz argued that three errors had occurred with respect to the hearing conducted by the Medical Examination Committee (see Report of Proceedings, November 27, 1979). Counsel argued that Dr. Munoz's appearance before the Committee had been designated as an interview rather than a hearing; that no evidence was really presented to the Committee by Ms. Morales with respect to the issues that the Committee

addressed; and that certain unsworn statements were taken from the Committee's witness, Beatrice Taylor, during the presentation of Dr. Munoz's case (see Report of Proceedings, November 27, 1979, p. 2-3).

REASON FOR GRANTING WRIT OF CERTIORARI

I.

THE COURT ERRED IN FAILING TO ORDER A NEW HEARING BEFORE THE MEDICAL EXAMINING COMMITTEE ON THE GROUND THAT DR. MUNOZ WAS NOT PROPERLY NOTIFIED OF THE NATURE OF THE HEARING TO BE CONDUCTED, AS REQUIRED BY THE ADMINISTRATIVE ACT AND DUE PROCESS OF LAW.

The Appellate Court's refusal to apply the notice requirements of the Administrative Procedure Act was predicated upon a finding

that the matter before the Medical Examining Committee was a hearing in a "contested case". It is clear that the "hearing" in this case before the Medical Examining Committee formed the basis for amending the original Complaint for Mandamus to a Complaint for Administrative Review. Accordingly, Findings of Fact and Conclusions of Law and an Order were necessary to support the Circuit Court's determination that the Order of the Director of the Department was not against the manifest weight of the evidence. Petitioner argues that as a condition precedent to such a finding,

it is mandatory that the notice requirements apply where the Department is, in the first instance, an adverse party and, secondly the Department ultimately controls the scope of the administrative proceeding.

At the outset, the Petitioner's injury as to the existence of the original answer sheets and test booklets amounted to nothing other than a discovery request in conjunction with the original Complaint for Mandamus. The hearing before the Medical Examining Committee, however, went far beyond the purpose for the request, resulting in an administrative determination effectively denying the relief requested in the Complaint for Mandamus,

filed in the Circuit Court of Cook County. At a minimum, the Department, acting in an adverse relationship, should have been required to treat the hearing as a contested case, sufficiently complying with the notice requirements of the Administrative Procedure Act as to the time and place of the hearing, the nature of the matter to be heard, and a short, plain statement of the matters asserted. Ill. Rev. Stat. 1979, Ch. 127, §1010(a).

It is true, of course, that Dr. Munoz requested a hearing but only to obtain from the Department the original examination booklets and answer sheets in its possession. The record in this case indicates that the Department would "interview"

Dr. Munoz for this purpose. However, the interview went beyond the scope of this request and mushroomed into a full hearing upon the ultimate question of whether Dr. Munoz should be issued a license to practice medicine. The "interview" evolved into a "hearing" which evolved into a contested case to which Dr. Munoz was entitled to the full protections of the Administrative Procedure Act. Accordingly, it became the Department's duty to adequately notify Dr. Munoz of the nature of the hearing, the legal authority and jurisdiction under which the hearing was to be held, and the particular sections of the statutes to be

relied upon by the Department. In the absence of this notice, Dr. Munoz was not prepared to present evidence to address the issue of licensure, including the right to subpoena documents and witnesses, to effectively cross-examine the Department's witness, Miss Taylor, and to present such evidence on his behalf as would rebutt the evidence presented by the Department. "Due process of law requires that findings of administrative agency be based on evidence presented in case so that an opportunity is given to all parties to cross-examine witnesses and

offer evidence in rebuttal." Garces v. Department of Registration and Education, 118 Ill. App.2d 66, 254 N.E.2d 622, 631 (1969).

Illinois courts adhere to the principle that administrative proceedings are governed by the requirements of due process of law, Rutledge v. Department of Registration and Education, 77 Ill. App.2d 103, 222 N.E.2d 195 (1967). Although the agency need not draw its charges with the same refinements of pleadings required in a court of law, a party must be reasonably informed of the nature of the charges against him so that the party may intelligently prepare

his defense, Smith v. Department of Registration and Education, 421 Ill. 332, 106 N.E.2d 722 (1952); Schyman v. Department of Registration and Education, 9 Ill. App. 504, 133 N.E.2d 551 (1956).

Petitioner believed that a determination that he would be granted his license would be made by the court of law when he initially filed his complaint for mandamus. There is nothing in this record that would have placed him on notice that the Department would decide this most serious issue on the basis of a formal hearing which originally was called an interview. Thus, as a condition precedent to a finding

that the underlying proceeding is not against the manifest weight of the evidence or contrary to law, a party is at least entitled to a minimal protection of the notice requirement in order that he might adequately prepare for his hearing.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that this Petition for Writ of Certiorari should be granted and the decision of the Illinois Appellate

Court, First Judicial District should be reviewed.

Respectfully submitted,

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APPENDIX

THIRD DIVISION
November 18, 1981

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

79-2429

IN RE THE MEDICAL LICENSE OF DR. RICARDO MUNOZ,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
Petitioner-Appellant,	)	
Vs.	)	HONORABLE ARTHUR L. DUNNE, JUDGE PRESIDING.
DEPARTMENT OF REGISTRATION AND EDUCATION,	)	
Respondent-Appellee.	)	

Miss JUSTICE McGILLICUDDY delivered the opinion of the court:

The petitioner, Dr. Ricardo Munoz, appeals from an order of the circuit court of Cook County which affirmed a decision of the Director of the Department of Registration and Education (Department.) The Director had held that the petitioner

was not eligible to receive a license to practice medicine in the State of Illinois. On appeal, the petitioner contends that his hearing before the Medical Examining Committee did not comply with the requirements of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq.) and due process of law.

On November 18,1977 the petitioner filed a complaint for mandamus in which he sought to compel the Department to issue a medical license to him. The petitioner alleged that on two occasions in 1968 he took and passed the National Board Examination* and that he was entitled to receive a license to practice medicine in Illinois.

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*In order to receive a medical license in Illinois, a person must pass the requisite examination. Ill. Rev. Stat. 1977, ch. 111, par. 4409.

Subsequently, on May 31, 1978, the petitioner's attorney wrote the Director requesting:

> "*** a hearing from the Department on the issue why has not the Department given Mr. Munoz his license to practice medicine in spite of the fact that Mr. Munoz took and successfully passed the two examinations he took in 1968. If the Department has proof to the contrary, Mr. Munoz wants to see the original examinations signed by him so that he could see where and if he failed. *** We are hereby formally requesting a hearing from the Department on the above described issue."

On June 5, 1978 Beatrice Taylor, Unit Supervisor, responded on behalf of the Department that:

> "Time has been allocated for an interview between the Illinois Medical Examining Committee and Dr. Munoz on June 14, 1978, ***Please have Dr. Munoz bring with him such materials as he feels supports his claim for licensure in this matter."

At the hearing the petitioner produced a copy of a form letter dated April 2, 1968 from the Department which stated that he had failed the National Board Examination. However, the scores typed on the copy of the letter indicated that he had sufficient points to pass the examination. The petitioner further stated he subsequently received a second copy of the April 2, 1968 letter, but the scores on the second copy indicated that he had failed the examination. The petitioner asserted that he did not receive the original copy of either letter.

The petitioner also produced a copy of a notification from the Department of Personnel which indicated that in October of 1968 he passed an examination given by the Department of Personnel which allowed him to be employed by a state hospital. This examination differed from the National Board Examination which was given by the Department of Registration and Education.

Petitioner's attorney asked to see the original examination and petitioner's answer sheet. Beatrice Taylor testified that the test booklets and answer sheets are sent to the testing service for scoring and are routinely destroyed after a certain period of time. Taylor also asserted that the Department always mails the original letter to the test taker informing him of the results of the Nationl Board Examination.

The Medical Examining Committee found that Munoz had not passed the National Board Examination. Thus, it recommended to the Director that Munoz be denied a medical license. On April 19, 1979, the Director adopted this recommendation and ordered that a license to practice medicine should not be issued to Munoz.

Subsequently, the trial court allowed the petitioner to amend his complaint for mandamus to be a complaint for administrative review.

On November 27, 1979, the trial court affirmed the Director's decision. The petitioner appeals.

On appeal the petitioner does not challenge the correctness of the Department's finding. Rather, he asserts that he did not receive adequate notice of the fact that a hearing would be conducted before the Medical Examining Committee. Petitioner contends that his attorney only requested an opportunity to examine the test materials and that he was unaware of the Department's intention to conduct a hearing on his qualifications. Thus, he was unprepared to present evidence in his behalf and to cross-examine witnesses.

The petitioner argues that his hearing did not comply with the general principles of due process of law. We disagree. The essence of procedural due process is notice and an opportunity to be heard. (Distaloa v. Department of Registration and Education (1979), 72 Ill. App.3d 977, 391 N.E.2d 489.) The petitioner certainly had adequate notice of the hearing since

his attorney personally requested it. Although the petitioner now claims that he only asked for an opportunity to examine the test materials, his attorney's letter specifically requested a hearing on the issue of whether the petitioner passed the examination. Furthermore, the Department's response advised the petitioner to bring any materials which supported his claim for licensure. We believe that this correspondence indicates that the petitioner was adequately notified of the nature of the hearing.

The petitioner also contends that the Department did not comply with the more strict notice requirements of the Administrative Procedure Act. (Ill. Rev. Stat. 1977, ch. 127, par. 1010(a).) These requirements are applicable only in a "contested case" which is an adjudicatory proceeding where the aggrieved party is entitled by law to a hearing before his rights, duties or privileges can be determined by a state agency. Ill. Rev. Stat. 1977, ch. 127, par. 1003.02.

The State argues that the instant case is not a contested case as defined by the Administrative Procedure Act. We agree. The applicable law in the instant case, the Medical Practice Act (Ill. Rev. Stat. 1977, ch. 111, par. 4401 et seq.), does not require a hearing before the Department can determine whether or not an applicant has passed the requisite medical examination for the issuance of a license to practice medicine. Since this was not a contested case as defined by the Administrative Procedure Act, the strict notice requirements of that Act were not applicable.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

RIZZI, P.J., and McNAMARA, J., concur.

56048

ILLINOIS SUPREME COURT
SUPREME COURT BUILDING
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(217) 782-2035

Robert H. Gillespy
Clerk

March 30, 1982

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No. 56048 - Dr. Ricardo Munoz, petitioner, vs. Department of Registration and Education, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Robert H. Gillespy
Clerk of the Supreme Court